

111TH CONGRESS
1ST SESSION

S. 1680

To amend titles XVIII and XIX of the Social Security Act to provide the authorized representative of a deceased beneficiary full access to information with respect to the deceased beneficiary's benefits under the Medicare and Medicaid programs.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2009

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend titles XVIII and XIX of the Social Security Act to provide the authorized representative of a deceased beneficiary full access to information with respect to the deceased beneficiary's benefits under the Medicare and Medicaid programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Expanding Access to
5 Medical Records Act”.

1 **SEC. 2. FULL ACCESS TO MEDICARE INFORMATION BY THE**
2 **AUTHORIZED REPRESENTATIVE OF A DE-**
3 **CEASED BENEFICIARY.**

4 (a) IN GENERAL.—Title XVIII of the Social Security
5 Act (42 U.S.C. 1395 et seq.) is amended by adding at
6 the end the following new section:

7 “FULL ACCESS TO MEDICARE INFORMATION BY THE AU-
8 THORIZED REPRESENTATIVE OF A DECEASED BENE-
9 FICIARY

10 “SEC. 1899. (a) IN GENERAL.—In the case of the
11 death of an individual entitled to, or enrolled for, benefits
12 under part A or enrolled for benefits under part B, the
13 Secretary shall—

14 “(1) make available to the authorized represent-
15 ative of the individual all information concerning the
16 individual’s benefits under this title, including—

17 “(A) the coverage and status of such bene-
18 fits (as of the day before the individual’s
19 death); and

20 “(B) billing, claims, and payment informa-
21 tion regarding items and services furnished to
22 the individual under this title (on or before such
23 day); and

24 “(2) provide such authorized representative ac-
25 cess to any source of information maintained by the
26 Federal government with respect to such benefits,

1 including online databases, that the individual had
2 access to during his or her lifetime.

3 “(b) DEFINITION OF AUTHORIZED REPRESENTA-
4 TIVE; SPECIAL RULES.—

5 “(1) IN GENERAL.—In this section, the term
6 ‘authorized representative’ means an executor, ad-
7 ministrator, or other individual who has authority to
8 act on the deceased individual’s behalf (as deter-
9 mined by the Secretary under paragraph (2)).

10 “(2) DETERMINATION OF AUTHORIZED REP-
11 RESENTATIVE.—

12 “(A) IN GENERAL.—The Secretary shall
13 establish procedures under which the Secretary
14 determines whether an individual is an author-
15 ized representative of the deceased individual.
16 Under such procedures, the individual seeking
17 such determination shall provide evidence (in
18 such form and such manner as specified by the
19 Secretary) of the individual’s legal authority to
20 act on behalf of the deceased individual.

21 “(B) TIMELINE FOR DETERMINATION.—
22 The Secretary shall make a determination
23 under subparagraph (A) not later than 30 days
24 after receipt of the evidence described in such
25 subparagraph.

1 “(3) NOTIFICATION AND ACCESS TO INFORMA-
2 TION.—After making a determination under para-
3 graph (2) with respect to an individual, the Sec-
4 retary shall—

5 “(A) notify the individual of the deter-
6 mination not later than 7 days after the date
7 on which the determination is made; and

8 “(B) in the case where such individual is
9 so determined to be the authorized representa-
10 tive of the deceased individual, as soon as prac-
11 ticable—

12 “(i) make available to the authorized
13 representative the information described in
14 paragraph (1) of subsection (a); and

15 “(ii) provide the authorized represent-
16 ative access to the sources described in
17 paragraph (2) of such subsection.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall take effect on the date that is 60 days
20 after the date of enactment of this Act.

1 **SEC. 3. FULL ACCESS TO MEDICAID INFORMATION BY THE**
 2 **AUTHORIZED REPRESENTATIVE OF A DE-**
 3 **CEASED BENEFICIARY.**

4 (a) IN GENERAL.—Title XIX of the Social Security
 5 Act (42 U.S.C. 1396 et seq.) is amended by adding at
 6 the end the following new section:

7 “FULL ACCESS TO MEDICAID INFORMATION BY THE AU-
 8 THORIZED REPRESENTATIVE OF A DECEASED BENE-
 9 FICIARY

10 “SEC. 1943. (a) IN GENERAL.—In the case of the
 11 death of an individual enrolled under the State plan for
 12 medical assistance or under a waiver of such plan, the
 13 State Medicaid agency shall—

14 “(1) make available to the authorized represent-
 15 ative of the individual all information concerning the
 16 individual’s benefits under this title, including—

17 “(A) the coverage and status of such bene-
 18 fits (as of the day before the individual’s
 19 death); and

20 “(B) billing, claims, and payment informa-
 21 tion regarding items and services furnished to
 22 the individual under this title (on or before such
 23 day); and

24 “(2) provide such authorized representative ac-
 25 cess to any source of information maintained by the
 26 State with respect to such benefits, including online

1 databases, that the individual had access to during
 2 his or her lifetime.

3 “(b) DEFINITION OF AUTHORIZED REPRESENTA-
 4 TIVE; SPECIAL RULES.—

5 “(1) In this section, the term ‘authorized rep-
 6 resentative’ means an executor, administrator, or
 7 other individual who has authority to act on the de-
 8 ceased individual’s behalf (as determined by the
 9 State Medicaid agency under paragraph (2)).

10 “(2) DETERMINATION OF AUTHORIZED REP-
 11 RESENTATIVE.—

12 “(A) IN GENERAL.—The State Medicaid
 13 agency shall establish procedures under which
 14 such agency determines whether an individual
 15 qualifies as an authorized representative of the
 16 deceased individual. Under such procedures, the
 17 individual seeking such a determination shall
 18 provide evidence (in such form and such man-
 19 ner as specified by the State Medicaid Agency)
 20 of the individual’s legal authority to act on be-
 21 half of the deceased individual.

22 “(B) TIMELINE FOR DETERMINATION.—
 23 The State Medicaid agency shall make a deter-
 24 mination under subparagraph (A) not later

1 than 30 days after receipt of the evidence de-
 2 scribed in such subparagraph.

3 “(3) NOTIFICATION AND ACCESS TO INFORMA-
 4 TION.—After making a determination under para-
 5 graph (2) with respect to an individual, the State
 6 Medicaid Agency shall—

7 “(A) notify the individual of the deter-
 8 mination not later than 7 days after the date
 9 on which the determination is made; and

10 “(B) in the case where such individual is
 11 so determined to be the authorized representa-
 12 tive of the deceased individual, as soon as prac-
 13 ticable—

14 “(i) make available to the authorized
 15 representative the information described in
 16 paragraph (1) of subsection (a); and

17 “(ii) provide the authorized represent-
 18 ative access to the sources described in
 19 paragraph (2) of such subsection.

20 “(c) DEFINITION OF STATE MEDICAID AGENCY.—
 21 The term ‘State Medicaid agency’ means the State agency
 22 responsible for administering the State plan established
 23 under this title or any waiver of such plan.”.

24 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendment made by this section shall
3 take effect on the date that is 60 days after the date
4 of enactment of this Act.

5 (2) EXTENSION OF EFFECTIVE DATE FOR
6 STATE LAW AMENDMENT.—In the case of a State
7 plan under this title which the Secretary of Health
8 and Human Services determines requires State legis-
9 lation in order for the plan to meet the additional
10 requirements imposed by the amendment made by
11 subsection (a), the State plan shall not be regarded
12 as failing to comply with the requirements of such
13 title solely on the basis of its failure to meet these
14 additional requirements before the first day of the
15 first calendar quarter beginning after the close of
16 the first regular session of the State legislature that
17 begins after the date of the enactment of this Act.
18 For purposes of the previous sentence, in the case
19 of a State that has a 2-year legislative session, each
20 year of the session is considered to be a separate
21 regular session of the State legislature.

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